

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID LEE WOMACK

Plaintiff,

v.

JOSEPH V. SMITH, et al.,

Defendants.

JURY TRIAL DEMANDED

No. 1:CV-06-2348 CCC

Judge Christopher C. Conner

Filed Electronically

**PLAINTIFF’S BRIEF IN OPPOSITION TO DEFENDANTS’
MOTION TO AMEND THE CASE MANAGEMENT ORDER**

Plaintiff David Lee Womack opposes Defendants’ Motion to Amend the Case Management Order (“Defendants’ Motion”) because it unfairly extends the discovery period for Defendants without providing the same courtesy to Plaintiff. Plaintiff does not oppose extending the case schedule; but Plaintiff does request that the Court give the parties an equal opportunity to obtain discovery during any extension.

This action has been pending since 2006. While it has been pending, Defendants have attempted to limit Plaintiff’s discovery three other times. *See* Docket Nos. 33, 63, and 83. At the same time, Defendants chose to wait until the end of discovery to take the deposition of Plaintiff. Indeed, on August 6, 2009 Defendants’ sought leave to take Plaintiff’s deposition (*See* Docket Nos. 72), they

filed their Petition for Writ of Habeas Corpus Ad Testificandum on April 19, 2010. (See Docket Nos. 117), and they served the notice of deposition on April 23, 2010. Plaintiff is unable to attend the deposition at the time noticed by Defendants because he will be undergoing surgery in Springfield, Missouri at the U.S. Medical Center for Federal Prisoners, which is run by the Federal Bureau of Prisons. Had Defendants not waited until the end of discovery to seek Plaintiff's deposition, there would be no need for an extension. But they did wait and they should not gain an unfair advantage as a result of their dilatory actions.

Fairness alone warrants that an extension of the discovery deadline should apply to both parties, but there are also practical reasons why the extension should not be limited to Plaintiff's deposition. First, Plaintiff's surgery is to repair damage caused by his time in restraints, which is at issue in this action. Documents and witnesses relevant to the surgery may warrant discovery requests by Plaintiff. Second, issues may arise at Plaintiff's deposition that require additional discovery requests by Plaintiff.

For all of these reasons, the Court should grant the extension to both parties in a uniform manner.

Respectfully submitted,

Dated: May 10, 2010

By: /s/ Aaron B. Hewitt

Peter E. Halle
Aaron B. Hewitt
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, DC 20004
202.739.3000
202.739.3001 (fax)

Andrew C. Whitney
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
215.963.5000
877.432.9652 (fax)

Deborah M. Golden
**WASHINGTON LAWYERS COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS**
11 Dupont Circle, NW, Suite 400
Washington, DC 20036
202.319.1000
202.319.1010 (fax)

Maxine M. Woelfling
MORGAN, LEWIS & BOCKIUS LLP
17 North Second Street, Suite 1420
Harrisburg, PA 17101-1604
717.237.5000
717.237.5001 (fax)

Attorneys for Plaintiff David Lee Womack

CERTIFICATE OF SERVICE

I, Aaron B. Hewitt, hereby certify that on this 10th day of May, 2010, a copy of PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANTS' MOTION TO AMEND THE CASE MANAGEMENT ORDER was served via electronic court filing on the following party:

Michael Butler
United States Attorney's Office
228 Walnut Street, Suite 220
Harrisburg, PA 17108
Michael.J.Butler@usdoj.gov

/s/ Aaron B. Hewitt